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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,084	10/19/2000	Kenneth B. Trauner	P1-15	7795

7590 07/31/2002

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EXAMINER
CROSS, LATOYA I

ART UNIT	PAPER NUMBER
1743	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/693,084	Applicant(s) TRAUNER ET AL.	
	Examiner LaToya I. Cross	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 October 2000* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-47* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5, 33 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

drop in view of amdt

Claim 5 recites the sensor package as being integrated into the seal (line 3), but then states that the sensor integration may be selected from integration into the glass, integration into the seal or integration between the seal and the glass. Clarification is required.

Claims 33 and 35 both recite "gums-polysaccharides of arabinose and galactose", "procyanidin (B1, B2, B3)" and "hydroxycinnamic acid esters (coutaric, caftaric, fertaric)", which all appear to be broad limitations followed by narrower limitations. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 8, 9, 10, 11, 13-15, 34, and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,738,442 to Paron et al.

Paron et al teach a wine temperature indicator for determining the temperature of wine within a bottle. The wine temperature indicator comprises a flexible plastic substrate having a liquid crystal temperature panel. The liquid crystal panels indicate (sense) the temperature of the wine within the bottle. The sensor also comprises two temperature scales for measuring the temperature. In use, the temperature indicator is attached to a wine bottle by way of an adhesive material (bonding material). The user compares the color of the temperature panel with that of the scales to determine if the temperature of the wine is suitable for drinking. See col. 2, lines 33-59. At col. 1, lines 15-25, Paron et al teach that temperature has a considerable effect on wine taste. Thus, in determining the temperature, one can determine the quality of the wine. The sensor is portable and easy to use.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 102, in view of the teachings of Paron et al.

5. Claims 1, 2, 6-10, 12-14, 24, 33-37 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,200,909 to Juergens.

Juergens '909 teaches a method and device for evaluating the quality of wine. The apparatus comprises an analysis means for determining constituent values in the wine, a converting means for converting the constituent values into scaled values and a display means for providing the user with tangible results of the analysis. The means for determining constituent values determines the amount of components in the wine that affect its quality or taste, i.e. glucose, fructose, pH value, phenols, tannins, ethanol, etc (col. 4, lines 4-17). When these values are determined, the means for converting the constituent values convert the values into readily understandable scales for the user to use (col. 4, lines 52-57). The scales may be presented on a display as graphical depictions. Figure 7 shows a block diagram comprising a testing device (110) for testing sweetness, astringency, acidity and body. The system may be totally automated with the testing device being connected to a computer (160). The computer (160) may be any type of computer including mini-computer, microcomputer or mainframe and performs the necessary calculations and displays the data to the user. The display may be any display type such as video display terminal or CRT (col. 13, lines 61-65).

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 102 in view of Juergens '909.

6. Claims 1, 2, 16, 17, 23, 24, 29, 30, 39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,490,042 to Wyatt.

Wyatt '042 teaches a method for determining properties of wine by determining the light scattering pattern in the wine; comparing with a reference pattern and using the difference to determine the quality of the wine. A laser/light source (1) produces a beam (2) which transverses a container containing a wine sample. A detector array (4) detects signals,

which in turn are amplified and stored digitally or plotted graphically by means of a processor (5) or analog recorder (6). The information may be analyzed and the results are presented on a display or printer. See col. 2, lines 23-41. Wyatt '042 also teaches at col. 3, lines 30-40 that wines absorb certain wavelengths. Thus, absorption spectrums may also be used to characterize the wine.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 102 in view of the teachings of Wyatt '042.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 17-23, 25-3 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyatt '042 in view of US Patent 6,014,204 to Prahl et al.

The disclosure of Wyatt '042 is given above. Wyatt '042 fails to teach any particular method or apparatus for using the absorption spectrum to determine the quality of wine.

Prahl et al '204 teach a fiber optic device for measuring absorption and scattering properties. The device comprises a light source for emitting light (14), a light detector (24) for detecting transmitted light and a fiber optic array (32). Fluorescent measurement may be determined by measuring fluorescent light at one or more wavelengths (col. 4, lines 43-50). The detect may comprise a spectrograph (col. 4, lines 60-62). The reference also teaches using a calibration grid to determine absorption and scattering values using only two reflectance measurements (col. 7, lines 8-11).

It would have been obvious to one of ordinary skill in the art to use the technique for measuring absorption with fiber optics, as disclosed by Prahl et al '204, in the method for determining wine quality of Wyatt '042, because such would allow the light scattering properties of the wine, and thus the quality of the wine, to be determined without having to open the wine bottle and thus preventing exposure of the wine to the surrounding environment.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103 in view of the teachings of Wyatt '042 and Prahl et al '204.

11. Claims 42-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juergens '909 in view of US Patent 6,013,702 to Robichon et al.

The disclosure of Juergens '909 is given above. Juergens fails to teach testing the quality of a wine cork.

Robichon et al '702 teach that substances in cork may adversely affect the quality of wine by giving it a cork taste. Robichon et al '702 teach that substances such as trichloroanisole, octenone, octenol and methylisoborneol give the wine an unacceptable taste (col. 2, lines 22-38). It would have been obvious to one of ordinary skill in the art to use the device and method of determining wine quality disclosed by Juergens' 909 to test for the presence or amounts of these substances also. Such method would provide the user with information on the presence of cork materials in the wine that might adversely affect its taste.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, in view of the teachings of Juergens '909 and Robichon et al '702.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 703-305-7360. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

LIC

July 27, 2002

Jill Warden
Supervisory Patent Examiner
Technology Center 1700